

SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Alpert Analyst: LuAnna Hass Bill Number: SB 1009

Related Bills: See Prior Analysis Telephone: 845-7478 Amended Date: June 18, 2003

Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Use Tax Collection By Franchise Tax Board

- ☒ DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as amended June 3, 2003.
- ☐ AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.
- ☒ AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as amended June 3, 2003.
- ☐ FURTHER AMENDMENTS NECESSARY.
- ☐ DEPARTMENT POSITION CHANGED TO _____.
- ☒ REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED June 3, 2003, STILL APPLIES.
- ☐ OTHER - See comments below.

SUMMARY

This bill would require the Franchise Tax Board (FTB) to collect certain use tax.

SUMMARY OF AMENDMENTS

The June 18, 2003, amendments resolved the technical concerns and some, but not all, of the implementation considerations by accepting the amendments suggested in the department's analysis of the bill as amended June 3, 2003. Specifically, the amendments would:

- Allow exempt organizations to elect to report use tax on an acceptable tax return.
- Clarify the payment application language to reflect the correct usage of the term "tax" to include penalties and interest associated with that tax.
- Clarify that the election to report use tax on a tax return would make that tax return a use tax return for purposes of the sales and use tax laws administered by the Board of Equalization (BOE).
- Require BOE to review FTB's tax form revisions and, within 10 days, either 1) notify FTB of their approval of the forms, or 2) submit comments to FTB regarding changes that should be included before BOE would approve the forms.

In addition, the amendments would make various technical changes and change the operative date from January 1, 2004, to January 1, 2003, that would allow taxpayers to report and remit use tax on the 2003 tax returns, which are filed in 2004.

Board Position:

<input type="checkbox"/> S	<input type="checkbox"/> NA	<input type="checkbox"/> NP
<input type="checkbox"/> SA	<input type="checkbox"/> O	<input type="checkbox"/> NAR
<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input checked="" type="checkbox"/> PENDING

Legislative Director

Date

Brian Putler

6/23/03

As a result of the amendments, the department has revised the effective and operative dates, which are included below. For convenience, the remaining concerns also are provided below. The remainder of the department's analysis of the bill as amended June 3, 2003, still applies.

EFFECTIVE/OPERATIVE DATE

This bill would be effective January 1, 2004. However, this bill states that it would be operative for purchases of tangible personal property made on and after January 1, 2003, in taxable years beginning on or after January 1, 2003, and ending on or before December 31, 2009.

POSITION

Pending.

IMPLEMENTATION CONSIDERATIONS

Department staff has identified the following implementation considerations and department staff is available to work with the author's office to resolve these and other concerns that may be identified.

- Under the current tax forms design schedule, the design, printing, and distribution of forms and booklets take place in the fall of the actual taxable year. For example, the design of the 2003 returns began in June 2003, printing will begin October 2003, and distribution of the returns and booklets will begin at the end of 2003. This allows taxpayers to begin reporting and paying their 2003 taxes in January 2004. However, depending on when this bill might be enacted during the 2003 session, it is uncertain if the department would have sufficient time to design, print, and distribute the forms accordingly.
- This bill requires FTB to remit the qualified use tax within 60 days of the receipt of the tax. Assuming the taxpayer self-assesses the use tax on the personal income tax (PIT) return, FTB receives PIT returns and payments daily from January through April 15th or, with an extension, October 15th. It is suggested that the author clarify the remittance language to specify how often FTB should remit the taxes. However, absent clarification and in order to ease administration for FTB, the department would likely remit the funds weekly or monthly, which would meet the 60-day criteria and have a minor impact on current fiscal operations.

FISCAL IMPACT

This bill would require a calculation for the sales and use tax that would require significant changes to the tax forms, personal income tax systems, and business entities tax systems. Preliminary cost estimates range from \$1.8 million to \$2.0 million for implementation and from \$500,000 to \$550,000 for on-going costs. These costs include costs resulting from changes to the tax forms, instructions, and booklets, processing hours, programming, testing, and maintaining departmental systems, and the development and negotiation of a data exchange with BOE for the sales and use tax remittance.

To ensure the department has the funding to implement this bill, the department would suggest the author add appropriation language to this bill that would cover the full costs of implementation. This would allow the department to begin an implementation plan to revise the tax forms and make systems changes. Absent a direct appropriation for FTB or approval of a deficiency by the Department of Finance for 2003/2004 or a budget change proposal (BCP) for the 2004/2005 fiscal year, the department would be required to redirect staff from other revenue generating activities of the department, such as collections administration or audit, to administer this bill.

Since the bill does not specify which tax forms FTB should revise, the department developed the above costing for those tax returns estimated to have the greatest impact on the use tax election. At this time, the department does not anticipate revising the personal income tax forms for non-residents/part-year residents or water's edge corporations and the above costing does not include the costs to revise the corresponding tax forms. However, if the author or BOE believes that these taxpayer groups should be included, the department could update the above costing accordingly to include those tax forms.

ECONOMIC IMPACT

This bill would have no identifiable revenue impact under the Personal Income Tax Law (PITL) and Corporation Tax Law (CTL). Collection of sales and use tax revenue is a function of BOE, which has both the data and expertise in this area. Accordingly, FTB staff defers the revenue estimate for this bill to BOE.

ARGUMENTS/POLICY CONCERNS

This bill would be operative for purchases on or after January 1, 2003, in taxable years beginning on or after that date, and to allow taxpayers to report and remit use tax on the 2003 income tax return, which is filed in 2004. Depending on when this bill may be enacted this year, taxpayers may not have been keeping adequate records or receipts of purchases during 2003 that are subject to the use tax and could be reported on the returns for 2003.

Current laws regarding the non-tax debts administered by FTB provide for a reimbursement to FTB of costs to administer the programs. The laws are usually specific to the amount of reimbursement available to FTB or require an agreement between agencies outlining reimbursement. Although through an agreement the reimbursement could be based on a percentage of collections, concern has arisen when the department contracts for a percentage of collection to cover costs because the possibility exists that the percentage may not cover the costs of the program in any given year and monies from the General Fund may be needed to cover any difference.

Under this bill, administrative functions regarding the use tax would be divided. FTB would collect use tax reported on the returns processed by FTB and transfer the money to BOE. However, BOE would retain responsibilities for auditing, processing claims for refund, and collecting any unpaid use tax reported on the returns processed by FTB. The author may wish to ensure that BOE systems are able to accept the additional taxpayer data that FTB would provide regarding the taxpayer and the use tax data. In addition, the separation of functions may cause confusion for the taxpayer.

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